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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Request for Comment on Broadband)
PCS C and F Block Installment)
Payment Issues)

WT Docket No. 97-82

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF MOUNTAIN SOLUTIONS LTD, INC.

Mountain Solutions LTD, Inc. ("Mountain Solutions") replies to the comments filed in response to FCC Public Notice DA 97-679, in which the Commission requested additional comment in WT Docket No. 97-82 on various proposals that it has received to restructure the FCC's broadband PCS Entrepreneur Block installment payment obligations.¹ Understandably, the Commission's present inquiry has generated a great deal of interest among, and commentary from the CMRS industry. Mountain Solutions, in particular, has a vested interest in the outcome of this proceeding, as it has been warning the Commission since the fall of 1996 of the "unique and extraordinary financial stress that is being suffered not only by MS

¹ Mountain Solutions is a Colorado-based, woman owned company that currently provides wireline telecommunications services to approximately 8,000 customers in fifteen communities in the State of Colorado. Mountain Solutions was the highest bidder on ten C block licenses, which it planned to use in order to implement its regional expansion plan. Mountain Solutions made the upfront payment necessary to participate in the auction, and met its first 5% down payment obligation, totaling approximately \$1.2 million. Subsequently, Mountain Solutions filed a waiver request of its second down payment obligation. The Commission denied that waiver request. *See Order, Mountain Solutions LTD., Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules*, DA 97-891 (rel. April 28, 1997). The FCC's denial is now the subject of an Application for Review, which was filed on May 28, 1997.

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but also by most other C block licensees"², and has sought much less expansive relief than is being considered in the present proceeding.

Already, the Commission has received numerous comments from C block licensees supporting proposals to restructure C and F block installment payment obligations and to reduce entrepreneur, and especially, C block debt. Many C block licensees have gone on record with the Commission attesting to the need for both the restructuring and the debt reduction. Because Mountain Solutions has been requesting such assistance for nine months, it will reiterate its basic arguments for the record in this proceeding.

A. Congressional Mandate

One of Congress' principal objectives in authorizing auction procedures for FCC licensing was to promote economic opportunity and competition by disseminating licenses to small businesses and women.³ In particular, the Congress was aware of the difficulties these groups have experienced in getting access to capital.⁴ Consequently, Congress in particular charged the Commission with taking a flexible approach to auction procedures, even payment schedules, when small businesses were involved.⁵

² Mountain Solutions Application for Review, p.1, filed May 28, 1997.

³ 47 U.S.C. §309(j)(3). Congress specifically directed the FCC to design its auction rules flexibly to "ensure that small businesses ...and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services..." *Id.* §309(j)(4)(D).

⁴ See Fifth R&O at ¶97, 101-105 ("In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital").

⁵ 47 U.S.C. §309(j)(4)(A). As explained in the legislative history to this provision "[u]nder this subsection, the Commission has the **flexibility** to utilize any combination of techniques [relating to payment schedules] that would serve the public interest" and to ensure that "deep pocketed" incumbents are not favored over "new companies or start-

In implementing its C block auction rules, the FCC acknowledged these requirements and the enormous negative impact that access to capital has had on women controlled small businesses.⁶ The Commission concluded that measures adopted in its C block auction rules "will increase the likelihood that designated entities who win licenses in the auctions become strong competitors on the provision of broadband PCS service."⁷

B. Access To Capital

Despite the Commission's efforts, financial problems have dogged the C block licensees from the start. As representatives of MCI explained to the staff in April 1997, the financial outlook for wireless companies has changed dramatically for the worse since the FCC began issuing C block licenses.⁸ MCI found the financial markets reflected growing skepticism over the prospects that C block licensees could ever be competitive with better-funded, lower cost, branded and established rivals.⁹ Consequently, IPOs contemplated by NextWave, Pocket Communications, Inc. ("Pocket") and General Wireless, Inc. ("GWI"), the largest C block bidders, were put on hold; Pocket, the second biggest winner in the C block auction, filed for Chapter 11 bankruptcy; several C block entities sought relief from pending

ups". H.R. Rep. No. 111, 103d Cong., 1st Sess. 255 (1993); *reprinted in* 1993 U.S.C.C.A.N. 378, 582.

⁶ Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532, ¶¶ 93-112 (1994) (hereinafter "Fifth R&O").

⁷ Fifth R&O at ¶96.

⁸ See Letter to William F. Caton from Leonard S. Sawicki, Director, FCC Affairs, MCI Telecommunications Corporation, dated May 1, 1997, (hereinafter "MCI Ex Parte Letter") describing April 24, 1997 ex parte meeting with FCC staff to change license payment terms for C block licensees; see also "Wall Street Investor Puts Nail in C Block Coffin," RCR, April 28, 1997 at 1.

⁹ *Id.*

deadlines citing financial problems;¹⁰ and most licensees found that public, private and vendor financing sources had simply dried up.¹¹ These developments, which hit hard at even the largest C block participants, were especially devastating to smaller entities like Mountain Solutions.

C. Prior Commission Assistance To C Block Licensees

In addition, Mountain Solutions previously has pointed out that the Commission has been sensitive to the increasingly unfavorable financial market environment for the C block, and that it took selective steps to protect certain C block winners. For example:

- In January 1997, the Commission granted 15 C block licenses to PCS 2000, L.P., despite finding that during the auction the applicant had misrepresented facts to the Commission concerning a bidding error, and that the applicant also lacked candor in its subsequent dealing with the FCC. Furthermore, the Commission also allowed PCS 2000 to effectuate a major ownership change to its applications, without any deleterious effect to its applications.¹²
- In January 1997, the Commission granted NextWave, the largest successful C block bidder, a waiver from the statutory cap on foreign investment, allowing it six months to put in place financing that complied with the law.¹³ This waiver was further extended in May 1997.¹⁴

¹⁰ See Letter to Michele C. Farquhar from Thomas Gutierrez, et al. re: Request for Modification of Entrepreneurs' Block Installment Payment Obligations from a Quarterly to an Annual Payment Schedule, dated March 13, 1997 (hereinafter "Gutierrez Letter").

¹¹ See MCI Ex Parte Letter; "Wall Street Investor Puts Nail in C Block Coffin," RCR, April 28, 1997 at 1.

¹² PCS 2000 Order.

¹³ See NextWave Order.

¹⁴ In May 1997, the Commission allowed NextWave to delay restructuring until after the Commission has completed its WTO rulemaking, to save NextWave from having "to undertake a costly restructuring that may ultimately prove to be unnecessary." NextWave Personal Communications Inc., *Order*, DA 97-1040 (hereinafter "NextWave May Order") (rel. May 16, 1997) at ¶ 12.

- In February 1997, the Commission commenced a rulemaking in which it acknowledged difficulties that sometimes occur in finalizing financial arrangements for second down payments, and proposed to introduce some flexibility into the requirements to take account of such difficulties.¹⁵
- In February 1997, the Commission granted waivers to a number of entities that had failed to make timely down payments (and also had failed to submit timely waiver requests), but that had made the down payments (and submitted waiver requests) shortly after the FCC notified them of the apparent default.¹⁶
- In April 1997, the Commission granted a waiver to GWI PCS, Inc., liberally construing its anticollusion rules to find that there had been no prohibited collusion between GWI PCS and U.S. Airwaves.¹⁷

Finally, in March and April 1997, the Commission indefinitely suspended the March 31 deadline for C and F block licensees to begin installment payments.¹⁸

D. Consistent Treatment Among Similarly Situated Entities is Required

Mountain Solutions urges the Commission to recognize what Mountain Solutions has been emphasizing for nine months: that due to factors beyond the control of any C block

¹⁵ Competitive Bidding NPRM at ¶¶ 61-63.

¹⁶ See, e.g., RFW, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B230, *Order*, DA 97-254 (rel. February 4, 1997); MFRI, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B435, *Order*, DA 97-255 (rel. February 4, 1997); Roberts-Roberts & Associates, LLC, Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Various BTA Markets, *Order*, DA 97-252 (rel. February 4, 1997); Southern Communications Systems, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B085, *Order*, DA 97-253 (rel. February 4, 1997); Wireless Telecommunications Company, Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B411, *Order*, DA 97-256 (rel. February 4, 1997); Longstreet Communications International, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B012, *Order*, DA 97-257 (rel. February 4, 1997) (hereinafter "February 4 Orders").

¹⁷ *GWI Order*, ¶¶ 31-41.

¹⁸ Installment Payments for PCS Licensees, *Order*, DA 97-649 (rel. Mar. 31, 1997)

licensee¹⁹, the entire C block requires additional flexibility in meeting their government debt payment obligations. If such flexibility is not forthcoming, massive C block defaults will likely follow. Furthermore, if such relief is granted, Mountain Solutions *must* be able to avail itself of the reduced debt and relaxed payment requirements. Mountain Solutions has already submitted a downpayment of over \$1.2 million. Under several of the debt reduction proposals currently under consideration,²⁰ Mountain Solutions total debt would be reduced to such an extent that it will have already met its 10% downpayment obligation.

Given the flexible treatment that the Commission has already afforded certain large C block licensees, and the significant debt payment relief under consideration for all entrepreneur block licensees, Mountain Solution cannot permissibly be excluded from the class of entities eligible to benefit from any reduced debt and relaxed payment obligations adopted. If the Commission precludes Mountain Solutions from availing itself of the reduced debt and payment obligations, this action would constitute disparate treatment of similarly situated entities, which the courts repeatedly have determined is impermissible under the Administrative Procedure Act, as well as basic principles of due process.²¹

E. Conclusion

Mountain Solutions urges to Commission to adopt the proposed revisions to the

¹⁹ Such as major changes in the financing environment for C block capital, and a perceived "flood" of available spectrum for commercial wireless use.

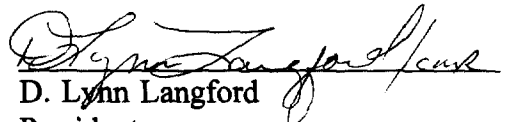
²⁰ See, e.g., Comments of BIA Capital Corp.; Comments of Bear Stearns & Co., Inc.; Comments of General Wireless, Inc.

²¹ See, e.g., *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

Entrepreneur Block installment payment obligations, and to make the relaxed payment obligations available, fairly and uniformly, to all winning C block licensees that requested relief, regardless of whether payment relief was requested prior to the initiation of this proceeding.

Respectfully submitted,
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